



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 16, 1994

Ms. Michele L. Gilmour  
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OR94-081

Dear Ms. Gilmour:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552.<sup>1</sup> We assigned your request ID# 22904.

The Amarillo Hospital District (the "hospital district") has received a request through Northwest Texas Hospital for six categories of information relating to ambulance and emergency medical services provided by Northwest Texas Hospital. Specifically, the requestor seeks:

1. All documentation . . . relating to current staff, personnel, or employees of Northwest Texas Hospital and its subsidiary, Amarillo Medical Services.
2. All documentation . . . regarding ambulances, transport vehicles and emergency medical service vehicles, as defined in Chapter 773.003(12) of the Texas Health Code, owned or operated by Northwest Texas Hospital and/or its subsidiary, Amarillo Medical Services since January 1, 1991.
3. All documentation . . . relating to budgets, finances and expenditures associated with emergency medical service equipment

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<sup>1</sup>We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

owned by and emergency medical services provided by Northwest Texas Hospital and/or Amarillo Medical Services since January 1, 1991.

4. All documentation...relating to patient rate schedules, patient charges and ambulance costs for emergency medical services provided by Northwest Texas Hospital and/or Amarillo Medical Services since January 1, 1991.

5. All documentation...relating to or mentioning TransAir Amarillo, TransAir or Nick Nelson.

6. All documentation...relating to the providing of ambulance service or emergency medical services by Northwest Texas Hospital or Amarillo Medical Services since January 1, 1991.<sup>2</sup>

You claim that the request is overbroad and burdensome. In the alternative, you seek to withhold the requested information under sections 552.102 and 552.104 of the act.

First, we address your claim that the request for information is overbroad and burdensome. Numerous opinions of this office have addressed situations where a governmental body has received a written request for information, but where the requested information is either unidentifiable or the request is "overbroad." For instance, in Open Records Decision No. 23 (1974), this office determined that "an agency may ask for a clarification if it cannot reasonably understand a particular request." More recently, in Open Records Decision No. 561 (1990) at 8-9, this office summarized our policy with respect to requests for unidentifiable information and "overbroad" requests. This office stated in that opinion:

We have stated that a governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision No. 87 (1975). It is nevertheless proper for a governmental body to require a requestor to identify the records sought. Open Records Decision Nos. 304 (1982); 23 (1974). For example, where governmental bodies have been presented with broad requests for information rather than specific records we have stated that the governmental body may advise the requestor of the types of information available so that he may properly narrow his request. Open Records Decision No. 31 (1974).

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<sup>2</sup>In a subsequent letter, the requestor narrowed his request. In this letter, the requestor agreed "that all requests concerning information relating to emergency medical service, emergency service equipment, and emergency service vehicles shall be limited to the use of that term as pertains to Chapter 773 of the Texas Health and Safety Code."

*Id.* This line of opinions recognizes the practical difficulties governmental bodies may encounter in fulfilling their statutory duties under section 552.301(a) of the Government Code. Moreover, these opinions speak to the requirement set forth in section 552.224 that "the officer of public records or the officer's agent shall give to a person requesting public records all reasonable comfort and facility for the full exercise of the right granted by this chapter," *see, e.g.*, Open Records Decision Nos. 87 (1975) at 5; 23 (1974), and the policy stated in section 552.227 that "an officer for public records or the officers agent is not required to perform general research," *see, e.g.*, open Records Decision Nos. 563 at 8-9, 555 (1990); 379 (1983); 347 (1982).

You claim that this request "is very broad and burdensome," that it encompasses information "scattered over the entire hospital," and that it is comparable to a recent discovery request that "required the full-time work of people for several weeks." You do not contend, however, that the requested information cannot be identified. The act does not permit the custodian of records to consider either the cost or the method of supplying the requested information. Open Records Decision No. 467 (1987) at 5. We note, however, that the custodian of records may require the requestor to post bond as a condition precedent when the preparation of requested information is unduly costly and reproduction would cause "undue hardship" if costs were not paid up front. Gov't Code § 552.263; Open Records Decision No. 467 (1987) at 6-7.<sup>3</sup>

Next, we address your claim that section 552.102 excepts some of the requested information from required public disclosure. Section 552.102 excepts "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 protects information only if its release would cause an invasion of privacy under the test articulated for section 552.101 of the act by the Texas Supreme Court in *Industrial Foundation of the South v. Texas Industrial Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). *See Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public. Generally, the public has a legitimate interest in the job qualifications of public employees. Open Records Decision Nos. 470; 467 (1987). Personnel information not protected by common-law privacy includes, for example, applicants' and employees' educational training, names and addresses of former employers, dates of employment, kind of work, salary, and reasons for leaving, names,

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<sup>3</sup>If the custodian does not require the requestor to post bond, the custodian may charge the requestor after the request has been fulfilled. *Id.* An agency may charge a requestor "all costs related to providing the record, including costs of materials, labor, and overhead" unless the request is for 50 or fewer pages of readily available information." Gov't Code §§ 552.261(b); .262(3). Furthermore, if the public information the requestor seeks is intertwined with confidential information, or if the records custodian must conduct an extensive physical search to sort out confidential records, the custodian may charge the requestor for materials, overhead, and labor necessary to delete or separate the confidential information. *See generally* Open Records Decision No. 488 (1988).

occupations, addresses and phone numbers of character references, job performance or ability, birth dates, height, weight, marital status, and social security numbers. *See* Open Records Decision No. 455 (1987); *see also* Open Records Decision Nos. 470, 467 (1987); 444 (1986); 421 (1984); 405 (1983). We have examined the information submitted to us for review. We conclude that it does not contain any information that is intimate or embarrassing. Accordingly, this information may not be withheld from required public disclosure under section 552.102 of the act.<sup>4</sup>

We note, however, that the information you submitted for review includes the home addresses and home telephone numbers of hospital district employees. Section 552.117 of the act excepts from required public disclosure "the home address or home telephone number of . . . a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024." Section 552.024 provides that section 552.117 may be applied only when an official or employee indicates in writing that he or she does not want his or her home address and telephone number disclosed. *See* Open Records Decision No. 530 (1989). Accordingly, you must withhold the home addresses and home telephone numbers of any officials or employees who had indicated in writing before the time you received this request that they do not want their home addresses or home telephone numbers disclosed.<sup>5</sup>

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<sup>4</sup>We assume for purposes of this ruling that you have provided us with representative samples of the personnel information requested in item number one. If the personnel information in the hospital district's possession includes any other type of information, you should not rely on this ruling. For your convenience, we list some of the information commonly found in employee personnel files that must be withheld from required public disclosure under the act. Information protected by common-law privacy includes information about illnesses and operations and physical handicaps of applicants and employees. *Id.* Medical records created by or under the supervision of a physician or maintained by a physician are excepted from disclosure under section 5.08(b) of article 4495b, V.T.C.S., the Medical Practice Act. *See also* Open Records Decision No. 324 (1982). Copies of prescriptions and a physician's note are excepted by this provision, as are clinic notes prepared by a nurse acting under a physician's supervision. Personal financial information is also excepted from required public disclosure by common law privacy interests. Open Records Decision No. 545 (1990) at 3 held that "[p]ersonal investment decisions appear to be of the kind of financial information that a person of ordinary sensibilities would object to having publicly disclosed." This decision further held that "an individual's investment decisions with respect to a deferred compensation plan, including his choice of investment product and the amounts invested in a product, are not of those kinds of financial transactions that are ordinarily of legitimate public interest." *Id.* at 4. W-4 forms are made confidential by statute and are thus excepted from required public disclosure by sections 552.101 of the act, which excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." W-4 forms are made confidential by federal law and must be withheld from required public disclosure. 26 U.S.C. § 6103(a)(2), b(2)(A), (p)(8); *see also* Attorney General Opinion MW-372 (1981).

<sup>5</sup>Normally, this office will not raise exceptions on behalf of a governmental body. Open Records Decision No. 481 (1987) at 2. However, this office is required to consider whether any of the information you presented for review is confidential. *See* Open Records Decision No. 344 (1982) at 2. Sections 552.024 and 552.117 make the home addresses and telephone numbers of certain public employees confidential.

Finally, we address your claim that section 552.104 excepts the requested information from required public disclosure. Section 552.104 excepts from required public disclosure "information which, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to prevent one competitor or bidder from gaining an unfair advantage over others. Open Records Decision No. 541 (1990). Ordinarily, section 552.104 may not be claimed to protect a governmental body's "competitive advantage" because it cannot be regarded as being in competition with private enterprise. Open Records Decision No. 463 (1987). However, in Open Records Decision No. 593 (1991), this office for the first time held that a governmental body might be deemed, under certain circumstances, to be a "competitor" in the marketplace. That decision found that the Teacher Retirement System, as a governmental entity authorized by both constitutional and statutory law to invest in securities, could be considered, with regard to those investments, to be a "competitor" for purposes of section 552.104. Article XVI, section 67 of the Texas Constitution authorizes the board of trustees of the Teacher Retirement System to "invest the funds of the system in such securities as the board may consider prudent investments." Tex.Const. art. XVI, § 67(a)(3). The constitution declares that the system shall invest its funds "in regard to the permanent disposition of [its] funds, considering the probable income therefrom as well as the probable safety of [its] capital." *Id.* The implicit charge to the Teacher Retirement System is to generate profit through sound investment. Accordingly, the decision found that certain information which could harm the system's competitive situation could be withheld from public disclosure. *See also* Open Records Decision No. 592 (1991) (holding that hospital "chargemasters" were not excepted by section 552.104 and section 552.110, the "trade secret" and "commercial and financial" information exception).

The rationale of Open Records Decision No. 593 is not applicable to your claim under section 552.104. A governmental body may be afforded the right to claim the "competitive advantage" aspect of section 552.104 only where competition is authorized by law. Open Records Decision No. 604 (1992) at 2. Although the hospital district may hold property, Acts 1957, 55th Leg., ch. 136, § 9b, and invest its funds, *id.* § 3e, it is not expressly empowered by the constitution or a statute to engage in competition for reasons of gaining financial profit. On the contrary, the purpose of the hospital district is to "furnish medical aid and hospital care to the indigent and needy persons residing in said Hospital District." *Id.*, § 1. We understand that the four hospitals located within the hospital district, including Northwest Texas Hospital, are non-profit organizations. Although the hospital district may compete in the emergency medical services market, it is not authorized to do so for profit. Accordingly, we conclude that the hospital district may not withhold the requested information under section 552.104. To the extent that the requested information does not contain any information made confidential by law, the requested information must be released in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Margaret A. Roll". The signature is fluid and cursive, with the first name "Margaret" being more prominent than the last name "Roll".

Margaret A. Roll  
Assistant Attorney General  
Open Government Section

MAR/GCK/rho

Ref.: ID# 22904

cc: Mr. John S. Chinuntdet  
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